



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,360	01/13/2005	Heiko Rieck	CS-8305/LcA 35,900	7396
34469	7590	11/23/2005	EXAMINER	
BAYER CROPSCIENCE LP			KUMAR, SHAILENDRA	
Patent Department			ART UNIT	
100 BAYER ROAD			PAPER NUMBER	
PITTSBURGH, PA 15205-9741			1621	

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/505,360

Applicant(s)

RIECK ET AL.

Examiner

SHAIENDRA -. KUMAR

Art Unit

1621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-30,33-39,41-44,46-49 and 51-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-30,33-39,41-44,46-49 and 51-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to applicants' communication filed on 11/10/05.

Claims 22-30, 33-39, 41-44, 46-49 and 51-53 are pending in this application. Claims 31, 32, 40, 45 and 50 have been canceled.

Claim Rejections - 35 USC § 102

1. Claims 22-28, 35-39, 42-43, 47-48, 52-53 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,589,493.

US'493, column 30-31, claim 2, anticipate instant claimed compounds, composition and method, when, in the reference A is A1, R1 and R8 are substituents similar to herein. Also note, column 33-35, for various microorganism species and compositions.

Claim Rejections - 35 USC § 103

2. Claims 22-30, 33-39, 41-44, 36-49 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over combined teachings of US'493 and JP'605.

US'493, teach structurally similar compounds, composition and method of treatment as claimed herein, see for example line 54 in column 30 through line 46 in column 31, also see columns 33-36 for various microorganism and compositions. The difference between the reference and herein claimed compounds is that in herein, n can be 2 or 3, as against n is always 1 in the reference.

JP'605, teach structurally similar compounds and composition wherein m, which corresponds to n herein, can be 2 or 3.

Art Unit: 1621

It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to modify US'493, by including 2 or 3 substituents for phenyl ring, as taught by JP'605, because JP'605, expressly teach that phenyl ring can have multiple substituents, with the reasonable expectation of achieving a successful composition for treating fungicide, absent evidence to the contrary.

Applicants' argument is moot in view of the amendments and new reference cited.

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAILENDRA -. KUMAR whose telephone number is (571)272-0640. The examiner can normally be reached on Mon-Thur 8:00-5:30, Alt Fri.

Art Unit: 1621

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571)272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SHAIENDRA - KUMAR
Primary Examiner
Art Unit 1621

S.Kumar
11/22/05